

INSTRUCTIONS

ON PETITION FOR A PROTECTIVE ORDER TO PREVENT ELDER OR DEPENDENT ADULT ABUSE

INSTRUCTIONS FOR THE PETITIONER

1. **Where to file**

A petition for a protective order must be filed in the superior court either in the county where the abuse occurred or in the county where the defendants, or some of them, reside at the time the petition is filed.

2. **Who may be protected by the orders?**

An elder or a dependent adult who has suffered abuse as defined in Section 15610.07 of the California Welfare and Institutions Code may be protected by the orders. Under Section 15610.07, "abuse of an elder or a dependent adult" means either:

- a. Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or
- b. The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

3. **Who can petition for the orders?**

The person to be protected, the conservator of the person to be protected, or a guardian ad litem appointed by the court to represent the person to be protected can file a petition.

4. **What forms are required?**

Prepare an original of each of the following forms and, once completed, make **at least two copies** of each:

Form EA-100, *Petition for Protective Orders*

Form EA-120, *Order to Show Cause and Temporary Restraining Order*

Forms are available at the court clerk's office or through legal publishers. Forms are also available on the California Courts Web site at www.courtinfo.ca.gov/forms.

The forms may be filled out on a computer, typed, or handwritten or handprinted. If you have access to the Internet, fillable forms are available on the California Courts Web site. Most libraries and some women's shelters and volunteer legal service groups have computers that you may use. If you handwrite your forms, print clearly.

You will need one copy of the temporary restraining order for each law enforcement agency and others who will help enforce the order and two copies for yourself. Thus, if you want to give copies of the court orders to three law enforcement agencies, you will need at least **five** copies of your forms. Bring the original and all copies to court to present to the court clerk.

5. **Judicial signature**

The court clerk will tell you where to take your documents for judicial signature.

6. **Filing fee, filing, and hearing date**

The *Petition for Protective Orders* (form EA-100) and the *Order to Show Cause and Temporary Restraining Order* (form EA-120) must be presented to the court. There is no fee for filing these documents. The court will provide a hearing date, which will be inserted in the order. When you file these documents, you should ask the court clerk to file-stamp your copies.

7. **Delivery of the temporary restraining order to law enforcement**

You should ensure that each order is delivered to the appropriate law enforcement agencies so that the orders will be enforced. Check with the court clerk to find out how to deliver an order.

8. Personal service requirements

The law requires that the person from whom you wish to be protected must be personally **served** this notice that you have filed for a restraining order. The judge cannot make any orders at the hearing unless and until the person from whom you wish to be protected has been properly served.

Once you have obtained a signed order, the original petition and order have been filed with the court, and you have received your filed-stamped copies from the court clerk, you must have the respondent—the person from whom you wish to be protected—personally **served** with a filed-stamped copy of the *Petition for Protective Orders* (form EA-100), a filed-stamped copy of the *Order to Show Cause and Temporary Restraining Order* (form EA-120), and a blank *Response to Petition for Protective Orders* (form EA-110). These papers must be **served** at least two days before the hearing date, unless the court has provided another time for completing service.

"Serve" is a legal term which means that your completed forms must be personally delivered to the person from whom you wish to be protected. Neither the protected person nor the petitioner (if that is someone other than the protected person) may serve the papers on the other party. Service may be made by a licensed process server, the sheriff's department, or any person 18 years or older who is not a party to the case.

If you hire a professional process server, you must pay for this service. It is helpful to give the process server a picture of the person from whom you wish to be protected and a list of times and places when it will be easier to find that person to serve the forms.

You may not have to hire a process server to have the court forms served on the person from whom you wish to be protected. For instance, if you cannot afford to pay, you may file a fee waiver application with the court. (If you want to apply for a fee waiver, see *Application for Waiver of Court Fees and Costs* (form 982(a)(17); *Information Sheet on Waiver of Court Fees and Costs* (form 982(a)(17)(A); and *Order on Application for Waiver of Court Fees and Costs* (form 982(a)(18).) The judge may waive your fees so that the sheriff or marshal will serve your papers for free. If the person from whom you wish to be protected is in jail, there is no fee to have the person served.

9. Proof of service requirements

After the restrained person has been personally served, the individual who served the papers on that person must complete and sign a *Proof of Personal Service* (form EA-140) (for personal service)). The original proof of service must be filed with the court before the hearing. Keep copies for yourself.

10. Bring documents to the court hearing

Bring copies of all documents you have filed with the court, including your *Proof of Personal Service* form, to the court hearing. In addition, complete and bring with you a completed copy of the *Restraining Order After Hearing* (form EA-130) for the judge's signature at the hearing.

11. After the hearing

a. Filing the signed restraining order after the hearing

At or after the hearing, the *Restraining Order After Hearing* (form EA-130) may be modified to reflect the judge's orders. Ask the judge or court clerk how to obtain the judge's signature on the final order. After the judge signs the order, make **at least two copies**. File the original with the court clerk and ask the court clerk to file-stamp the copies for you.

b. Delivery of the signed restraining order

You should ensure that the order is delivered to the law enforcement officials that you would like to have enforce the order. Check with the court clerk to find out how to deliver the order.

c. Serving the signed restraining order

If the respondent—the person from whom you wish to be protected—was not present in court at the court hearing, you should arrange to have the respondent personally served with a filed-stamped copy of the *Restraining Order After Hearing* (form EA-130).

d. Proof of service of the signed restraining order

After the restrained person has been served, the person who served the papers must complete and sign a *Proof of Personal Service* (form EA-140). The original must be filed with the court. Keep copies for yourself.

INSTRUCTIONS FOR THE RESPONDENT

1. If you are served with an *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* (form EA-120) and a *Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-100), you should promptly seek legal advice. If you have no attorney, the attorney referral service of your local bar association may be of assistance.
2. If you wish to respond to or oppose the petition, you should file a *Response to Petition for Protective Orders* (form EA-110). Forms are available at the court clerk's office, from legal publishers, and in fillable form on the California Courts Web site at www.courtinfo.ca.gov/forms. An original response must be filed with the court and a copy served on the petitioner or the petitioner's attorney. You do not have to pay any fee to file your response.

In addition to the response, you may file and serve declarations signed by you and other persons who have personal knowledge of the facts. A declaration form (form MC-031) is available from the court clerk's office. If you do not know how to prepare a declaration, you should see an attorney. After you have filed the response with the clerk of the court, a copy must be delivered personally or by mail to the petitioner or the petitioner's attorney.

You cannot serve the petitioner yourself. The person who serves the petitioner must complete and sign a *Proof of Personal Service* (form EA-140) (for personal service) or *Proof of Service by Mail* (form EA-141) (for service by mail). You should file the completed form with the court clerk before the hearing date or bring it with you to the hearing.

3. If you wish to oppose the petition, in addition to filing a response you should be present at the hearing. If you have any witnesses, they must also be present at the hearing.
4. If the court orders you to relinquish firearms, you must sell all your firearms to a licensed gun dealer or relinquish them to a law enforcement agency. You must file a receipt showing that you have sold or relinquished the firearms within 72 hours of receiving the order. You may use *Proof of Sale or Turning In of Firearms* (form EA-145) for this purpose.

Requests for Accommodation

Assistive listening systems, computer-assisted real-time-captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civ. Code, § 54.8.)

